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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON**

RIVER CITY MEDIA, LLC, et al.,
Plaintiffs,
v.
KROMTECH ALLIANCE
CORPORATION, et al.,
Defendants.

Case No. 2:17-cv-00105-SAB

**PLAINTIFFS' MOTION TO
STRIKE DEFENDANTS'
SUPPLEMENTAL AUTHORITIES
IN RESPONSE TO COURT
QUESTION POSED AT
AUGUST 16, 2017 HEARING AND
REQUEST FOR ATTORNEY'S
FEES OR, IN THE
ALTERNATIVE, REQUEST FOR
LEAVE TO FILE OPPOSING
SUPPLEMENTAL AUTHORITIES**

Without Oral Argument
Hearing Date: September 22, 2017
Spokane, Washington

INTRODUCTION AND RELIEF REQUESTED

Plaintiffs River City Media, LLC, Mark Ferris, Matt Ferris, and Amber Paul respectfully move to strike the “Supplemental Authorities in Response to Court Question Posed at August 16, 2017 Hearing” (ECF No. 56) (the “Supplemental Brief”) filed on August 21, 2017, by Defendants International Data Group, Inc., CXO Media, Inc. and Steve Ragan (collectively, the “IDG Defendants”). Because the Court did not request additional authorities or briefing, the IDG Defendants’ Supplemental Brief is improper under Local Rule 7.1.

Rather than request supplemental briefing, the Court entered civil minutes to the docket stating that all three motions (ECF No. 12, ECF No. 14, and ECF No. 41) were “under advisement.” *See* ECF No. 55. Accordingly, Plaintiffs respectfully ask the Court to strike the IDG Defendants’ improper Supplemental Briefing and to award Plaintiffs a reasonable attorney’s fee as compensation for time spent drafting and filing this motion. In the alternative—and only if the Court intends to consider the IDG Defendants’ Supplemental Brief—Plaintiffs respectfully request leave to file opposing supplemental authorities for the Court’s consideration.

STATEMENT OF FACTS

On August 16, 2017, the Court heard argument on the IDG Defendants' Motions to Dismiss (ECF No. 12 and No. 14) and Defendant Kromtech's Motion to Dismiss (ECF No. 41). The Court adjourned the hearing and informed the parties to expect a ruling in two to four weeks. Though the Court actively participated in the oral argument by exercising its right to ask questions of the parties' counsel, the Court *did not* explicitly request—or grant leave to file—supplemental authorities or additional briefing.

On August 21, 2017, the IDG Defendants filed their improper Supplemental Brief in an attempt to capitalize on discussion that occurred during the August 16, 2017 hearing. The IDG Defendants' Supplemental Briefing contains

1 approximately three pages of additional argument and citation to authority focused
 2 exclusively on how the Court should interpret and apply RCW 23.95.505 to the
 3 facts of this case—three pages of additional briefing that the Court did not request
 4 and that the IDG Defendants did not include in their original motion.

5 **ARGUMENT**

6 **A. The Court should strike the IDG Defendants' improperly submitted
 7 Supplemental Brief or, in the alternative, grant Plaintiffs leave to file a
 8 response.**

9 The IDG Defendants filed additional briefing in support of their Motion to
 10 Dismiss despite having already filed a motion and reply as provided for in Local
 11 Rule 7.1. Defendants should not be permitted to introduce new arguments and new
 12 case law into the Court's decision making process by creatively interpreting the
 13 Court's questions at oral argument. Neither Fed. R. Civ. P. 7 nor Local Rule 7.1
 14 explicitly address supplemental briefing or authorities, but Local Rule 7.1 *does*
 15 expressly limit the parties to one motion, one response, and one reply, in addition
 16 to oral argument. *See* LR 7(a)–(h).

17 While this Court's Local Rules do not provide for supplemental authorities or
 18 surreplies, the Western District of Washington addresses surreplies in its local
 19 rules at LCR 7(g). Courts in that district strike surreplies or “supplemental
 20 briefing” submitted in violation of LCR 7(g). *See Gauthier v. Twin City Fire Ins. Co.*,
 21 2015 WL 12030097, at *1 (W.D. Wash. July 15, 2015). Similarly, the Western
 22 District's LCR 7(n) permits parties to bring new authority to the Court's attention
 23 if the “relevant authority issued after the date the party's last brief was filed” as
 24 long as such authority is attached “without argument.” *Id.* This Court has
 25 considered whether to accept a party's surreply in the recent past, but in the single
 26 published decision on point, the Court noted that it accepted a surreply because *it*
 27 *had been filed in accordance with the Court's scheduling order. Onley v. Jordan*, 2017

1 WL 924460, at *2 (E.D. Wash. March 8, 2017). The IDG Defendants did not file
 2 their Supplemental Brief in accordance with any such scheduling order.

3 Plaintiffs request that the Court disregard and strike Defendants'
 4 Supplemental Briefing. But if the Court is inclined to consider Defendants'
 5 additional arguments and authorities, Plaintiffs respectfully request leave to file a
 6 response as soon as possible.

7 **B. Plaintiffs respectfully request an award of a reasonable attorney's fee for
 8 the time spent drafting and filing this motion.**

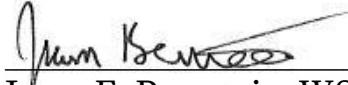
9 The IDG Defendants filed supplemental authorities and additional briefing
 10 after the Court heard oral argument on the relevant motions. Despite IDG
 11 Defendants' contention, the Court *did not* explicitly request any such
 12 supplementary briefing or authorities. Though not explicitly in violation of a court
 13 order, Defendants nonetheless filed briefing in spite of entered civil minutes
 14 designating the relevant motions as "under advisement." ECF No. 55. Plaintiffs
 15 request that the Court use its inherent power to impose sanctions to compensate
 16 Plaintiffs for time spent responding to Defendants's improper brief. *See Herrera v.*
 17 *Singh*, 103 F. Supp. 2d 1244, 1255–56 (E.D. Wash. 2000) (Courts may impose
 18 sanctions using inherent authority for "the willful disobedience of a court order"
 19 or when "a party has acted in bad faith, vexatiously, wantonly, or for oppressive
 20 reasons"). Here, the even if the IDG Defendants did not directly disobey a court
 21 order, they *have* acted vexatiously and wantonly by filing an unrequested brief in
 22 violation of Local Rule 7.1. The Court should grant Plaintiffs an award of a
 23 reasonable attorney's fee for the time spent responding to their improper filing.

24 **CONCLUSION**

25 For the foregoing reasons, Plaintiffs respectfully request that the Court strike
 26 the IDG Defendants' Supplemental Brief *or* grant Plaintiffs leave to file a response
 27 of their own. In either event, Plaintiffs also respectfully request a reasonable
 28 attorney's fee for time spent drafting this motion.

1 Dated: August 23, 2017

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CERTIFICATE OF SERVICE

I hereby certify that on August 23, 2017, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will send a notification of filing (NEF) to the following:

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I declare under penalty of perjury that the foregoing is true and correct.

s/ Jason Bernstein
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